

US EPA ARCHIVE DOCUMENT

TESTING AGREEMENT

This Agreement between the United States Environmental Protection Agency (EPA), the Town of Jay, Maine and International Paper Corporation, Androscoggin Mill (IP) sets forth the Parties' understanding with regard to the performance of certain testing, undertaken cooperatively by the Parties in furtherance of IP's proposed XL Project. This Agreement is in accordance with the authority set forth in Section 114 of the Clean Air Act, 42 U.S.C. § 7414 (CAA), as more fully described below.

I. Testing To Be Performed

1. The testing performed pursuant to this Agreement is to be conducted at the Waste Fuel Incinerator (WFI) at IP's Androscoggin Mill in Jay, Maine. For purposes of this Agreement, "testing" is defined solely as the collection of data to develop and evaluate the accuracy of a Predictive Emission Monitoring System (PEMS). The PEMS is being developed and evaluated as part of IP's proposed XL Project which is designed to analyze whether PEMS can serve as an alternative monitoring device for emissions from IP's WFI.

2. All testing shall occur at the WFI in a manner deemed satisfactory to EPA and the Town of Jay in accordance with a Test Plan, which is attached to and incorporated herein as Appendix A. Testing in this manner, which EPA believes is necessary to develop and evaluate the PEMS fully, could result in exceedences of relevant emissions standards or other license limits or rules. IP agrees that, consistent with the Test Plan, the WFI will not be operated in a manner that would violate National Ambient Air Quality Standards (NAAQS). The specific air emissions to which this Testing Agreement applies are set forth in the Test Plan.

3. The Parties agree that all testing shall occur within thirty months from the date that IP gives EPA and the Town of Jay written notice that PEMS model development is set to begin. This Testing Agreement will expire within one year from the date it is signed by EPA, if EPA does not receive such written notice from IP that PEMS model development is commencing. This Agreement can be extended if all Parties agree to such an extension in writing. IP shall provide EPA and the Town of Jay with written notice of the actual dates chosen for testing at least fourteen (14) days prior to testing. This Agreement applies only to those specific dates and times for which IP gives EPA notice of testing.

4. The Parties agree that the testing is being undertaken with mutual cooperation and in the interest of generating data for IP's proposed XL Project.

II. Confidentiality

5. Any information claimed to be confidential business information (CBI), disclosed by IP or otherwise discovered as a result of the testing, shall be treated in accordance with the regulations set forth in 40 C.F.R. Part 2.

III. Access to Testing Data

6. IP agrees that all data, results or other written information (“testing information”) generated by the testing shall be kept on-site at IP and will be made available to EPA and stakeholders in the XL Project, subject to Paragraph 5, above.

IV. Adherence to Site Requirements

7. All Parties shall comply with IP’s safety policies and requirements.

V. Reservation of Rights

8. EPA agrees not to use the testing information gathered for purposes of PEMS model development, calibration, or validation against IP in any enforcement proceeding, except as expressly set forth herein. Specifically, EPA reserves the right to use the testing information to: 1) initiate an action to respond to situations which may present an imminent and substantial endangerment; 2) pursue criminal enforcement or 3) initiate an enforcement action to address violations resulting from operations beyond the scope of the Test Plan. EPA retains the right to utilize all credible evidence of non-compliance with WFI regulatory requirements including, but not limited to, NO_x and SO₂ Continuous Emissions Monitoring (CEMs) data in all instances other than the properly notified and/or pre-planned potential exceedences which may take place during the PEMS model development and calibration periods, and during scheduled formal validation model specifications tests, as described more fully in the Test Plan.

9. Nothing in this Agreement shall constitute a waiver of IP’s right to contest the applicability or relevancy of the testing information in the event EPA uses such information for one of the purposes set forth in Paragraph 8, above. The Parties acknowledge that IP’s cooperation in the performance of the testing shall not constitute a waiver or admission against interest of any position IP may take or has taken in comments filed to proposed regulations, guidance, policy statements, permits, or any other administrative action or any position IP may take in pending or future litigation or administrative action.

VI. Entire Agreement

10. This Agreement, including appendices, constitutes the entire agreement between the Parties and any amendment or change to this Agreement must be in writing and signed by the Parties.

VII. Effective Dates and Termination of Testing

11. This Agreement becomes effective upon signature by all of the Parties and shall govern the conduct related to the testing until the testing is complete or the testing is terminated in accordance with Paragraph 13, below.

12. IP shall provide EPA with written notice upon termination of the testing.

13. EPA may, in its discretion, terminate the testing at any time if EPA determines that conditions exist which may cause a violation of NAAQS or present an imminent and substantial endangerment, or for failure to test in a manner consistent with the Testing Agreement or the Test Plan, or for other cause shown. IP may, at its discretion, terminate the testing at any time and without cause. Either Party may terminate this Agreement if satisfactory progress toward negotiating the PEMs XL Project is not being made, or if the PEMs XL project is terminated for any reason.

SIGNATORIES:

Mindy Lubber
Acting Regional Administrator
U.S.E.P.A., Region I

Date signed:_____

Eric Schaeffer, Director
Office of Regulatory Enforcement
Office of Enforcement and Compliance Assurance
U.S.E.P.A., Headquarters

Date signed:_____

name
title
Town of Jay, Maine

Date signed:_____

name,
title
International Paper Corporation

Date signed:_____